

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA
11

12 DAVID SCHLOSSER,

13 Petitioner,

14 v.

15 MELISSA ANDREWJESKI,

16 Respondent.

17 CASE NO. 22-1112 RJB-DWC

18 ORDER RE-REFERRING CASE
19 AND STRIKING NOTING DATE
20 ON REPORT AND
21 RECOMMENDATION

22 This matter comes before the Court on the Report and Recommendation of U.S.
23 Magistrate Judge David W. Christel. Dkt. 28. The Court has considered the Report and
24 Recommendation (Dkt. 28), Petitioner's Objections to the Report and Recommendation (Dkt.
25 30), Respondent's Response to Petitioner's Objections to the Report and Recommendation (Dkt.
26 31), and the remaining file. It is fully advised.

27 On August 8, 2022, Petitioner, *pro se*, filed this habeas corpus petition pursuant to 28
28 U.S.C. § 2254 challenging his March 15, 2019 judgment and sentence after his conviction by a
29 jury for rape of a child in the first degree of his stepdaughter A.D. Dkt. 1. The Petitioner
30

1 initially raised six grounds for relief. *Id.* He then filed an unopposed motion to withdraw
2 Grounds 3, 5, and 6. Dkt. 25.

3 On May 18, 2023, the Report and Recommendation was filed. Dkt. 28. It recommends
4 granting the Petitioner's unopposed motion to withdraw Grounds 3, 5, and 6. *Id.* The Report
5 and Recommendation recommends denial of relief on the remaining Grounds 1, 2, and 4. *Id.* It
6 also recommends finding that an evidentiary hearing is not necessary and that a Certificate of
7 Appealability be denied. *Id.* The Petitioner, through counsel, filed objections to portions of the
8 Report and Recommendation objecting to recommendations regarding the denial of an
9 evidentiary hearing, denial of relief on Ground 1 and Ground 2, and the denial of the Certificate
10 of Appealability. Dkt. 30.

11 In his objections, regarding Ground 2, the Petitioner also argues that his Sixth
12 Amendment rights were violated when the trial court prohibited him from questioning A.D.'s
13 mental health counselor about what, if any, A.D. told her counselor of Petitioner's alleged sexual
14 abuse of A.D. Dkt. 30 at 17. This portion of Ground 2 was not in Petitioner's Petition (Dkt. 3 at
15 21) and appears to be raised for the first time in this case in the objections. It is unclear from the
16 record whether the Petitioner exhausted this portion of Ground 2 with the Washington courts or
17 whether he is now procedurally barred from doing so.

18 Accordingly, the case should be re-referred to Magistrate Judge Christel for further
19 proceedings relating to Petitioner's argument that his Sixth Amendment rights were violated
20 when the trial court prohibited him from questioning A.D.'s counselor about what, if any, A.D.
21 told the counselor of Petitioner's alleged sexually abuse of A.D.

The noting date for the Report and Recommendation (Dkt. 28), Petitioner's Objections to the Report and Recommendation (Dkt. 30), Respondent's Response to Petitioner's Objections to the Report and Recommendation (Dkt. 31), should be stricken to be reset when appropriate.

ORDER

- This case **IS RE-REFERRED** to Magistrate Judge Christel for further proceedings consistent with this opinion; and
 - The noting date for the Report and Recommendation (Dkt. 28), Petitioner's Objections to the Report and Recommendation (Dkt. 30), Respondent's Response to Petitioner's Objections to the Report and Recommendation (Dkt. 31) **IS STRICKEN** to be reset when appropriate.

The Clerk is directed to send uncertified copies of this Order to all counsel of record and to any party appearing pro se at said party's last known address.

Dated this 27th day of June, 2023.

Robert F. Bryan

ROBERT J. BRYAN
United States District Judge